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November 13, 1992

ORIGINAL
FILE

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 92-214
FM Table of Allotments
Columbia and Bourbon, Missouri

Dear Ms. Searcy:

Enclosed herewith for filing, on behalf of our client, Lake Broadcasting, Inc., are an original and four (4) copies of its "COMMENTS AND COUNTERPROPOSAL OF LAKE BROADCASTING, INC." in the above-referenced FM channel rulemaking proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certification of Service (all w/enc.)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 92-214
Table of Allotments,)
FM Broadcast Stations) RM-8062
(Columbia and Bourbon, Missouri)

TO: Chief, Allocations Branch
Mass Media Bureau

COMMENTS AND COUNTERPROPOSAL OF LAKE BROADCASTING, INC.

LAKE BROADCASTING, INC. ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, permittee of Station KXIY(FM), Cuba, Missouri, and an applicant for a new FM broadcast station on Channel 244A at Bourbon, Missouri, by its attorneys and pursuant to §§1.415 and 1.420(d) of the Commission's Rules, hereby submits its comments and counterproposal in response to the above-captioned Notice of Proposed Rule Making ("NPRM"), DA-92-1163, released September 22, 1992. In support whereof, the following is shown:

1. The NPRM proposes, on behalf of Al Greenfield d/b/a The Greenfield Group ("Greenfield"), permittee of Station KCMQ(FM), Columbia, Missouri, to upgrade KCMQ's facilities from Channel 244C3 to Channel 244C1 and either to substitute Channel 297A for Channel 244A at Bourbon, Missouri, or to delete Channel 244A from the Table of Allotments, if there is no application filed for Channel 244A during the comment cycle herein. As Lake will demonstrate herein: (1) Channel 244A should not be deleted, because a timely application for a new

FM station on that frequency at Bourbon has been filed; (2) Greenfield's proposed upgrade to Channel 244C1 is fatally defective on engineering grounds; and (3) in lieu of Greenfield's proposed substitution of Channel 297A for Channel 244A at Bourbon, the Commission should upgrade Lake's present Class A allotment at Cuba, Missouri (Station KXIY) to Channel 297C3.

I. Channel 244A Should Not be Deleted at Bourbon

2. On November 12, 1992, Lake filed an application for a new FM station on Channel 244A at Bourbon, pursuant to the Commission's "first come/first serve" policy in §73.3573(g)(3) of the Rules. Lake has simultaneously filed separate "Comments" in this proceeding, which include a copy of its entire Bourbon application, along with copies of Lake's filing fee check and the Federal Express label showing that Lake's Bourbon application was sent to the Mellon Bank in Pittsburgh, Pennsylvania, on November 12 for next-day delivery.

3. Thus, it is clear that Lake is very interested in becoming the licensee of an FM station on Channel 244A at Bourbon, and its timely filing precludes deletion of Channel 244A from the Table of Allotments "for lack of interest" (NPRM, ¶3). Indeed, Lake was the original petitioner for the allotment of Channel 244A at Bourbon in 1988; however, the Commission's previous duopoly prohibition (amended in September 1992) precluded Lake from filing its application sooner.

II. Greenfield's proposed upgrade to Channel 244C1 is fatally defective on engineering grounds

4. There are two engineering bases for denying Greenfield's proposed upgrade to Channel 244C1 on the merits. First, Greenfield and the NPRM incorrectly assume that Channel 297A is currently available for allotment at Bourbon. In reality, Channel 297A is not available, because of mutual exclusivity, since it is directly implicated in a still-pending FM channel rulemaking proceeding in MM Docket No. 89-120 (FM Table of Allotments (Northwye, Cuba, Waynesville, Lake Ozark, and Eldon MO) (the "Cuba" case), 7 FCC Rcd 1449 (MMB 1992)).

5. In the Cuba case, supra, the Commission proposed, inter alia, to substitute Channel 297A for Channel 271A at Cuba, Missouri, and Lake counterproposed the substitution of Channel 270C1 for Channel 270A at Eldon, Missouri (which requires the Commission's proposed Channel 297A substitution). The Cuba Report and Order did not make either substitution, and Lake timely filed a Petition for Reconsideration on March 23, 1992, which is still pending. As the attached FM channel study (Exhibit A) demonstrates, Channel 270C1 cannot be allotted at Eldon without Channel 297A being substituted for Channel 271A at Cuba. Hence, Channel 297A is presently "tied up" in the Cuba proceeding, and it is premature for the Commission to consider allotting it to Bourbon.

6. In other words, Greenfield's proposal, which depends upon the availability of Channel 297A (a frequency which

cannot be allotted at both Bourbon and Cuba) is void as a "contingent" rulemaking proposal. See FM Table of Allotments (Kaukauna and Cleveland WI), 6 FCC Rcd 7142 n.2 (MMB 1991) (counterproposals -- and presumably petitions for rulemaking -- must be technically correct when initially filed and cannot be contingent upon future rulemaking events).

7. The second set of engineering defects with Greenfield's proposal involves violations of §73.315(a) and (b) of the Rules. As shown in the attached Engineering Statement (Exhibit B) of J. S. Sellmeyer, President of Sellmeyer Engineering, Greenfield's proposal (1) does not place a principal community contour over any part of the city of Columbia, Missouri in clear violation of §73.315(a), and (2) has significant line-of-sight obstruction in clear violation of §73.315(b). It is well established that the Commission will not waive principal community allotment requirements at the allocation stage, except "in the most unusual circumstances". TV Table of Allotments (Anniston AL), 6 FCC Rcd 1992, 1993 ¶13 (1991). Greenfield has made no such showing. Lake urges that the clear violations of the engineering mandates of §73.315(a) and (b) require the outright denial of Greenfield's proposal.

III. Counterproposal: Upgrade Channel 271A (or Channel 297A) at Cuba to Channel 297C3

8. Finally, attached as Exhibit C is an FM spacing study which shows that Channel 297C3 can be substituted at

Lake's Cuba, Missouri transmitter site for Channel 271A (its present allotment) or 297A (the Cuba proposed allotment). Lake hereby counterproposes that instead of allotting Channel 297A at Bourbon, the Commission should allot Channel 297C3 at Cuba and modify Lake's KXIY(FM) construction permit accordingly.

9. Lake's counterproposal can be summarized as follows:

<u>City</u>	<u>Channel Number</u>	
	<u>Present</u>	<u>Proposed</u>
Bourbon, Missouri	244A	244A
Cuba, Missouri	271A (or 297A)	297C3

Substituting Channel 297C3 for Lake's Class A frequency at Cuba will provide the area's first local wide-area FM service.

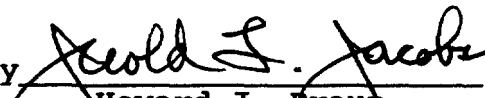
IV. Conclusion

10. In sum, Greenfield's Columbia rulemaking proposal is procedurally and substantively violative of the Commission's FM allotment and engineering rules and policies and should be summarily denied. Moreover, Channel 244A cannot be deleted at Bourbon, in light of Lake's timely-filed application for a new station on that frequency. Finally, the upgrading of Lake's present Class A allotment at Cuba to Channel 297C3 is consistent with the Commission's allotment and engineering policies and would provide a far superior use for that frequency than allotting it to Bourbon in lieu of Channel 244A. Since Lake has fully demonstrated that there

is no need to change the present Channel 244A Bourbon allotment and that Greenfield's proposed Columbia upgrade is inconsistent with the Commission's rules and policies, Lake submits that the paramount public interest would best be served by adopting Lake's counterproposal and upgrading its present Class A allotment at Cuba to Channel 297C3.

Respectfully submitted,

LAKE BROADCASTING, INC.

By 
Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN
1300 - 19th Street, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-7177

Its Attorneys

Dated: November 13, 1992

EXHIBIT A

STUDY SHOWING THAT CHANNEL 297A MUST BE SUBSTITUTED FOR CHANNEL 271A AT CUBA, TO ALLOW THE SUBSTITUTION OF CHANNEL 270C1 FOR CHANNEL 270A AT ELDON, MISSOURI, AS IN THE PENDING RECONSIDERATION PETITION IN DOCKET 89-120.

NOTE THAT THERE IS A 39.2 KM SHORT-SPACING TO CHANNEL 270C1 USING CHANNEL 271A AT CUBA, MISSOURI.

IF LAKE IS BE BE GRANTED USE OF CHANNEL 270C1 AS IS CONTEMPLATED IN THE PETITION, THEN CHANNEL 271A MUST BE REMOVED FROM USE AT CUBA, MO.

search of channel 271A (102.1 MHz), at N. 38 3 49, W. 91 24 37.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
Searching Channel 271A (102.1 MHz):									
ALC	Union	MO	269	A	U	56.5	27.0	34.6½	29.5
KLPW	Union	MO	269	A	L	56.5	27.0	34.6½	29.5
KBMX	Eldon	MO	270	C1	A	89.8	129.0	270.2½	-39.2
ALC	Cuba	MO	271	A	D	0.6	105.0	75.8½	-104.4
ALC	Cuba	MO	271	A	U	0.6	105.0	75.8½	-104.4
KXIY	Cuba	MO	271	A	C	0.0	105.0	0.0½	-105.0
ALC	Northweye	MO	271	A	A	32.5	105.0	252.4½	-72.5-deleted 89-120
KJPWFM	Waynesville	MO	272	A	D	70.6	64.0	247.4½	6.6
ALC	Waynesville	MO	272	A	U	70.6	64.0	247.4½	6.6
KJPWFM	Waynesville	MO	272	A	L	70.6	64.0	247.4½	6.6
KEZKFM	St. Louis	MO	273	C	L	110.5	94.0	59.2½	16.5
ALC	St. Louis	MO	273	C	U	110.5	94.0	59.2½	16.5
KJPWFM	Waynesville	MO	274	C3	A	70.6	42.0	247.4½	28.6
KJPWFM	Waynesville	MO	274	C3	A	70.6	42.0	247.4½	28.6

SELLMEYER ENGINEERING

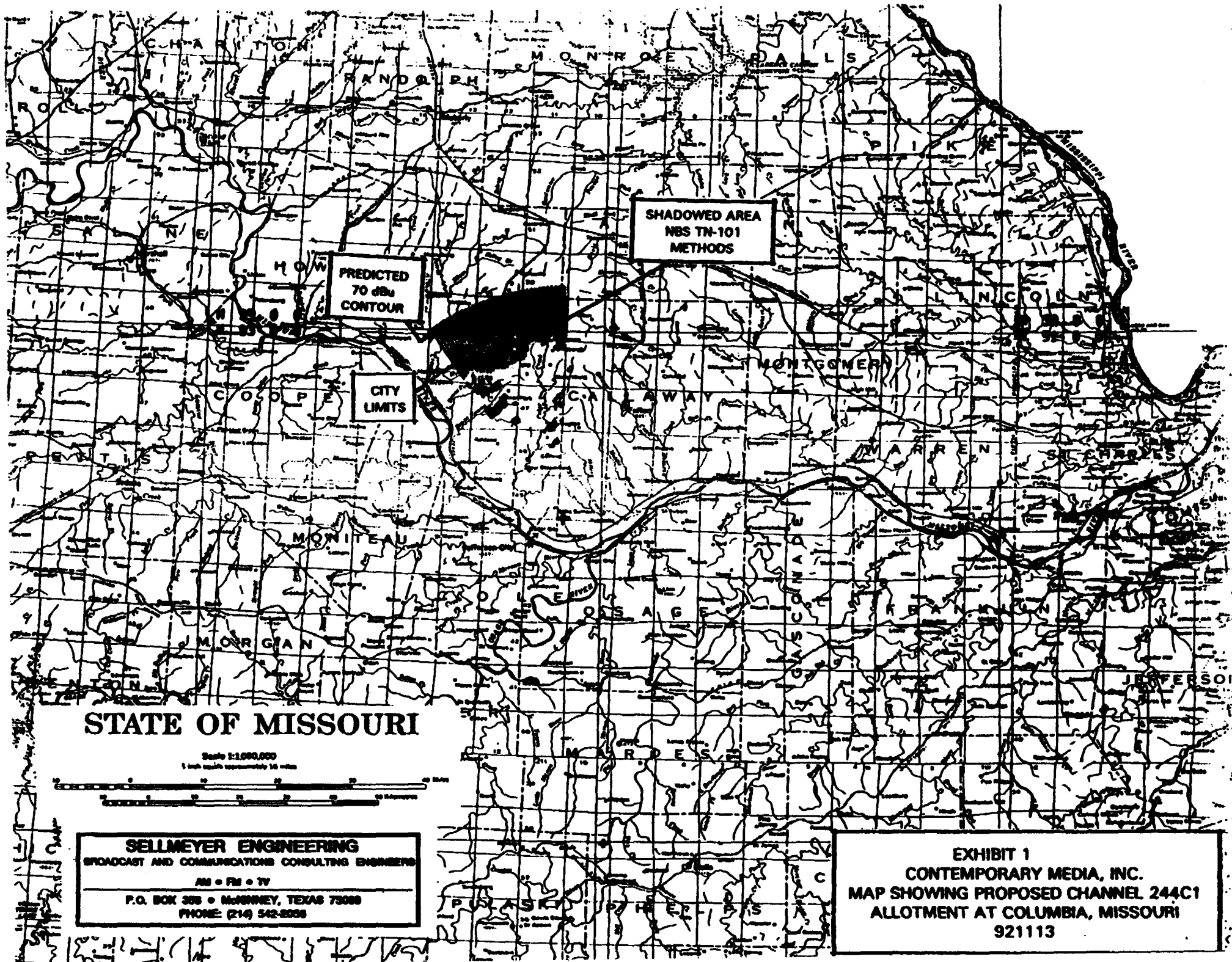
BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS
P. O. Box 356 McKinney, Texas 75069
MEMBER AFCEE

^{(214) 542-2058}
~~below the required 70 dBu level. A line is drawn shading the area~~
below the threshold. This shaded area is shown on the map of Exhibit 1. It may be clearly seen that no part of the City of Columbia, Missouri will receive city grade service from the proposed location.

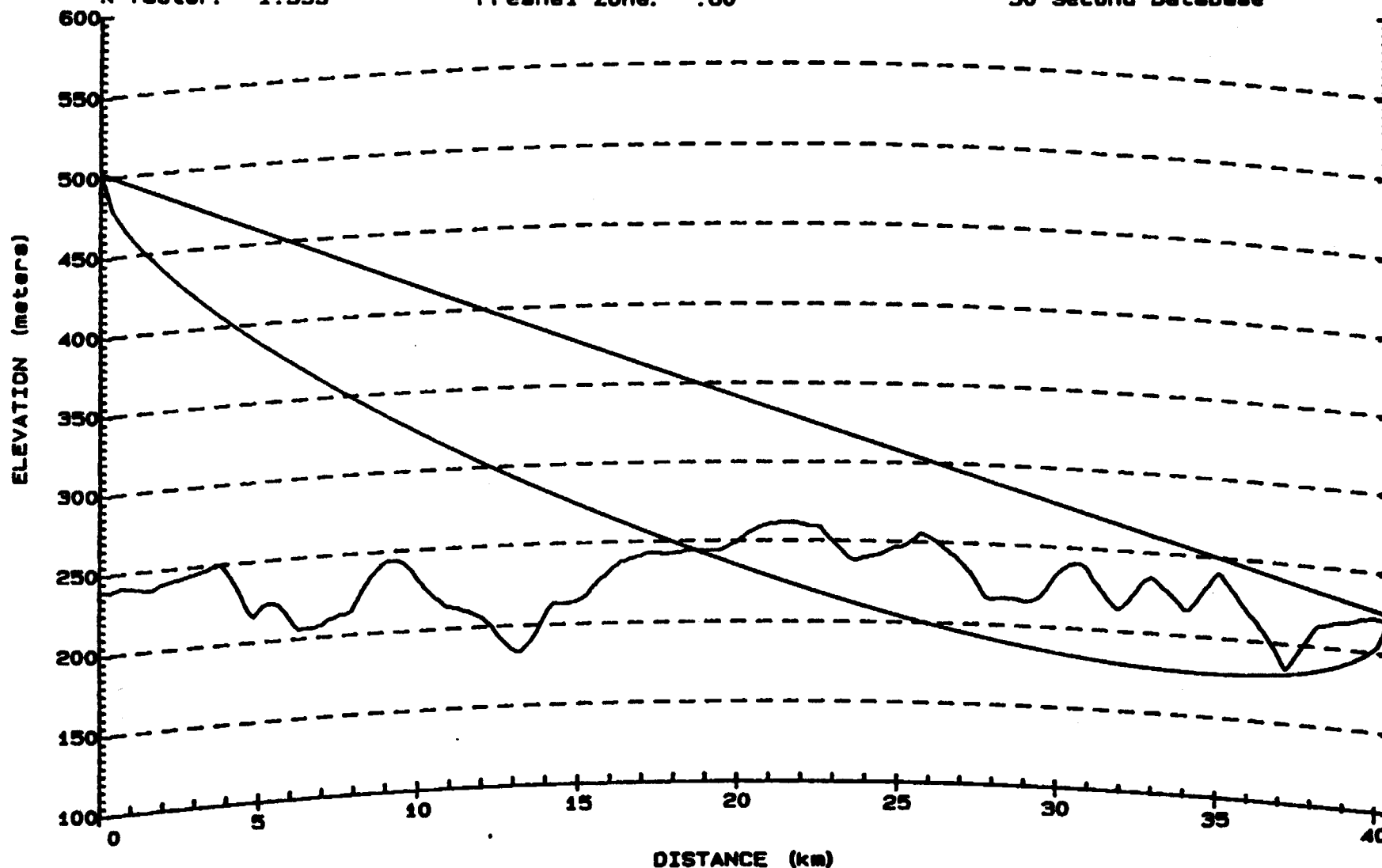
The path profile of Exhibit 2 shows the intervening terrain between the proposed transmitter site and the reference point for Columbia, Missouri. A 0.6 first Fresnel zone clearance line is shown on the profile. It is evident from the profile that an inferior signal will be placed over the City of Columbia. In some areas, notably the southern portion of the city about 37 kilometers from the transmitter site, reception be completely obstructed due to terrain blockage. Thus, it will not be possible to comply with Section 73.315(b) of the Rules.

The proposed allotment may not be made at a site closer to the City of Columbia due to spacing restrictions for Station KZBK, Brookfield, Missouri and Station KXTR, Kansas City, Missouri.

It is poor Public Policy to allocate a facility which cannot comply with the Rules of the Commission and, thus, cannot provide adequate service to the City of License. For these reasons, the proposal of Greenfield should be denied.



Transmitter coords: 38 37 40 92 7 0 Azimuth: 332.50 degs. Receiver Distance: 40.6 km
 Frequency: 96.7 MHz Transmitter Elevation: 503.0 m Receiver Elevation: 224.0 m
 Number of Obstacles: 0 Obstacle Loss: 5.3 dB Total Path Loss: 109.6 dB
 K factor: 1.333 Fresnel Zone: .60 30 Second Database



SELLMAYER ENGINEERING
 P. O. BOX 356
 MCKINNEY TEXAS 75069

EXHIBIT 2
 PATH PROFILE FROM PROPOSED
 KCMQ CHANNEL 244C1
 TO COLUMBIA, MO. REFERENCE POINT

SELLMEYER ENGINEERING
BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS
P. O. Box 356 McKinney, Texas 75069
MEMBER AFCCE
(214) 542-2056

CERTIFICATION OF ENGINEER

I hereby state that:

I am President of Sellmeyer Engineering

The Firm of Sellmeyer Engineering has been retained by Contemporary Media, Inc. to prepare this Engineering Exhibit

I am a graduate of Arizona State University with the degree of Bachelor of Science in Engineering

I am a Registered Professional Engineer in the States of Ohio and Texas

My qualifications as an Engineer are a matter of record with the Federal Communications Commission

This Engineering Exhibit was prepared by me personally or under my direct supervision, and

All facts stated herein are true and correct to the best of my knowledge and belief.

J. S. Sellmeyer, P. E.

November 13, 1992

P. O. Box 356
McKinney, Texas 75069
214-542-2056

LAKE BROADCASTING, INC. COUNTER-PROPOSAL

MM Docket 92-214

SPACING STUDY SHOWING THE ALLOCATION OF CHANNEL 297-C3

at the Cuba, Missouri transmitter site of Lake Broadcasting,
Inc, permit for Channel 271A or 297A.

No other changes in the table of assignment need to be made
to assign Channel 297C3 to Cuba, Missouri as the area's first
local wide area FM service.

CHANNEL 297C3 AT CUBA, MO.

38-03-49

91-24-37

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Bourbon	MO	244	A	V	21.3	12.0	78.2½	9.3
KNSX	Steelville	MO	244	A	L	15.4	12.0	192.1½	3.4
KTXV	Jefferson City	MO	295	C	L	114.1	96.0	304.0½	18.1
ALC	Jefferson City	MO	295	C	U	83.7	96.0	301.5½	-12.3 - does not apply
KBMVFM	Birch Tree	MO	296	A	L	120.3	89.0	185.8½	31.3
KBMVFM	Birch Tree	MO	296	A	C	120.3	89.0	185.8½	31.3
KBMVFM	Birch Tree	MO	296	C3	A	116.6	99.0	189.4½	17.6
ALC	Birch Tree	MO	296	C3	V	112.3	99.0	186.0½	13.3
KCFM	Lexington	MO	297	C	C	244.8	237.0	296.2½	7.8
ALC	Marion	IL	297	B	U	220.4	211.0	99.0½	9.4
ALC	Lexington	MO	297	C	U	245.1	237.0	300.6½	8.1
ALC	Cuba	MO	297	A	A	0.0	142.0	0.0½	142.0 SHORT
WDDDFM	Marion	IL	297	B	L	220.4	211.0	99.0½	9.4
KCFM	Lexington	MO	297	C1	L	245.1	211.0	300.6½	34.1
KMJM	St. Louis	MO	299	C	L	110.5	96.0	59.2½	14.5
ALC	St. Louis	MO	299	C	U	110.5	96.0	59.2½	14.5

CERTIFICATE OF SERVICE

I, Debra A. Williams, a secretary in the law offices of Rosenman & Colin, do hereby certify that on this 13th day of November, 1992, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**COMMENTS AND COUNTERPROPOSAL OF LAKE BROADCASTING, INC.**" to the following:

Michael C. Ruger, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

Ms. Kathleen Scheuerle*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8314
Washington, D.C. 20554

Frank R. Jazzo, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Ave., N.W.
Suite 400
Washington, D.C. 20036-2847
COUNSEL FOR THE GREENFIELD GROUP


Debra A. Williams

***BY HAND**